

Module 3

Overview of the Virginia Stormwater Management Program

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Module 3a.

Overview of Stormwater Legislations

The Federal Water Pollution Control Act

- First major US law to address water pollution
- One of earliest references to clean water as a resource
- Act also set the precedent for a federal authority to regulate water quality

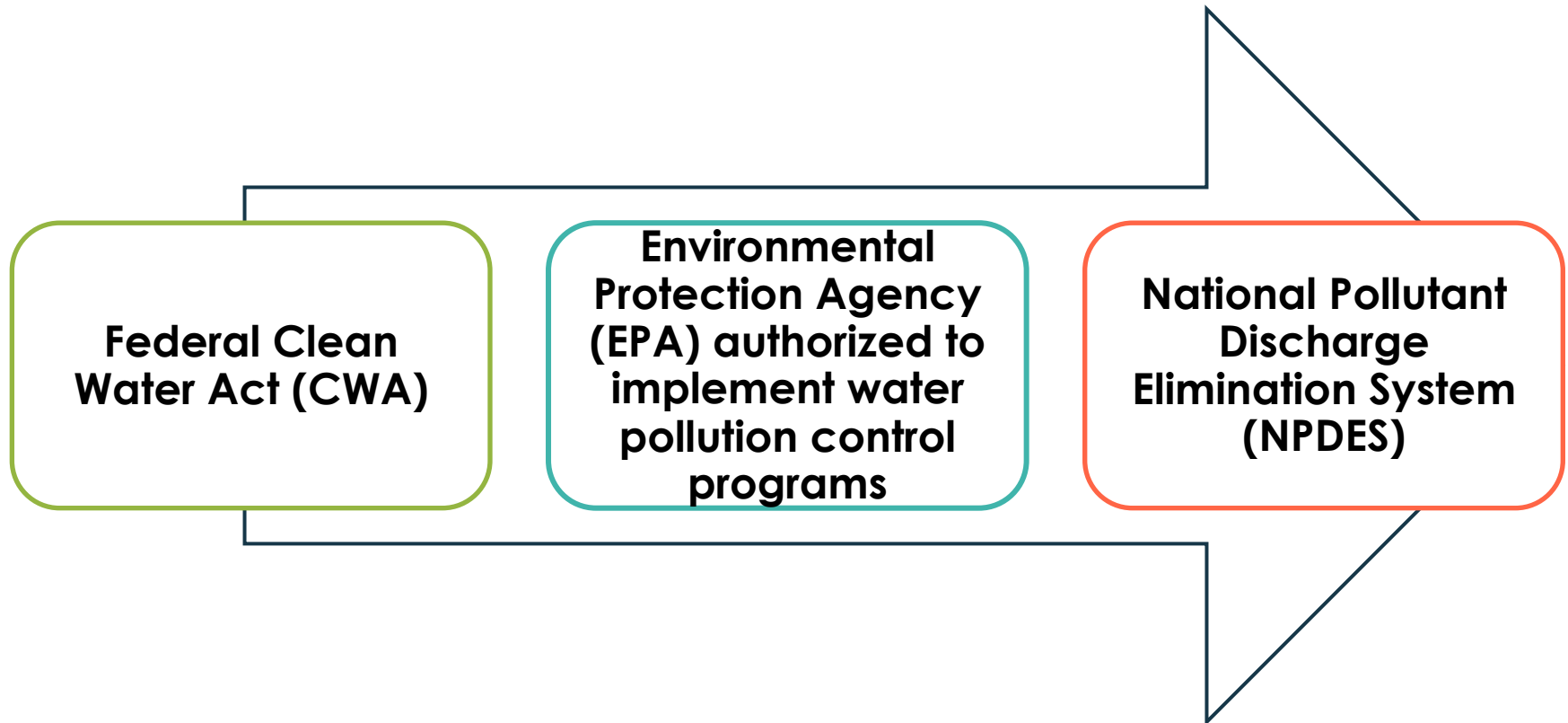
The Clean Water Act (1972)

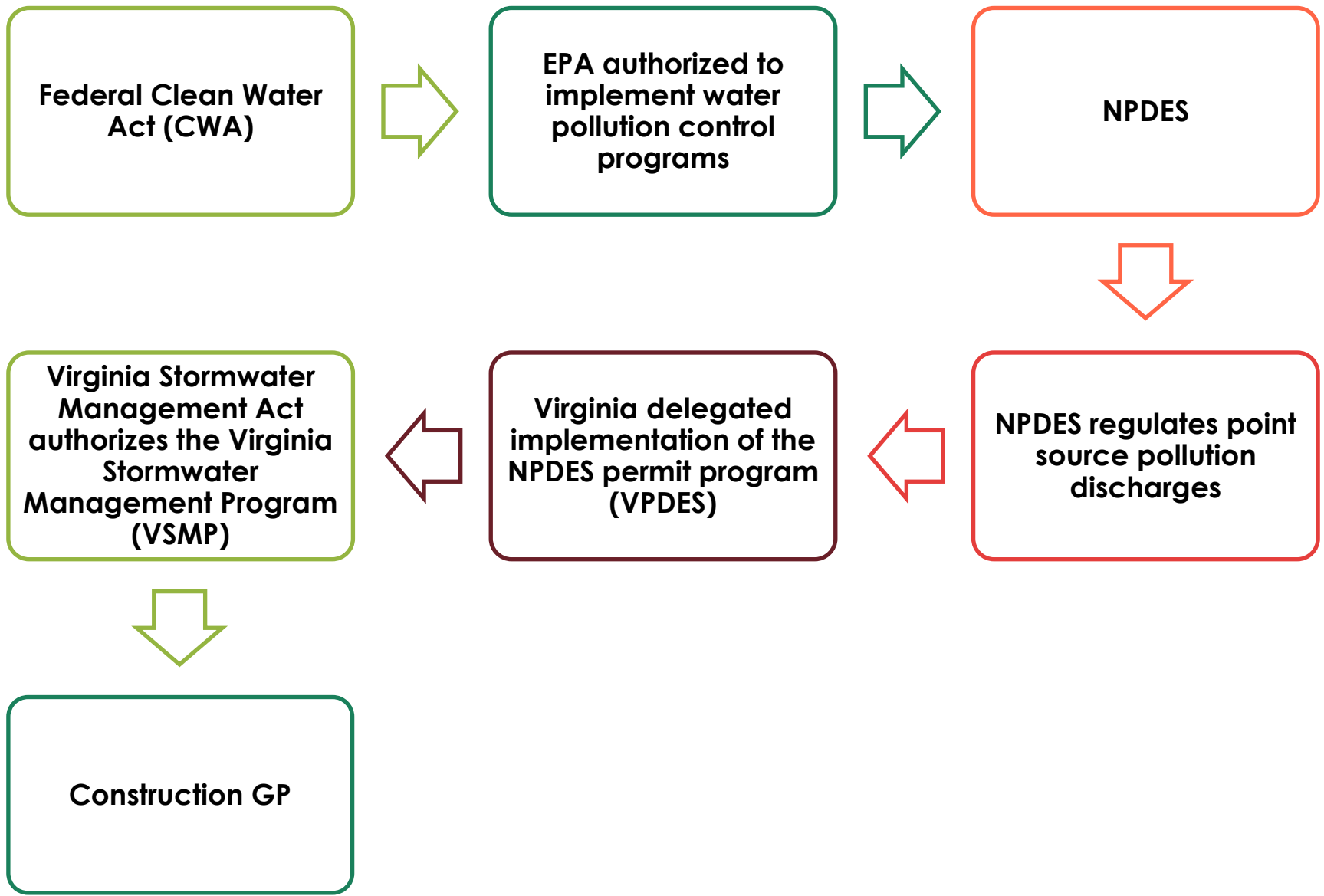
- Congress passed major amendments to the Federal Water Pollution Control Act in 1972
- Now known as the Clean Water Act (CWA)

The Clean Water Act (1972)

- The amendments made a number of changes to strengthen the existing law including:
- Consolidated the control of water pollution policy under the administrator of the newly created US Environmental Protection Agency (EPA)
- Established the National Pollutant Discharge Elimination System (NPDES) Permit Program

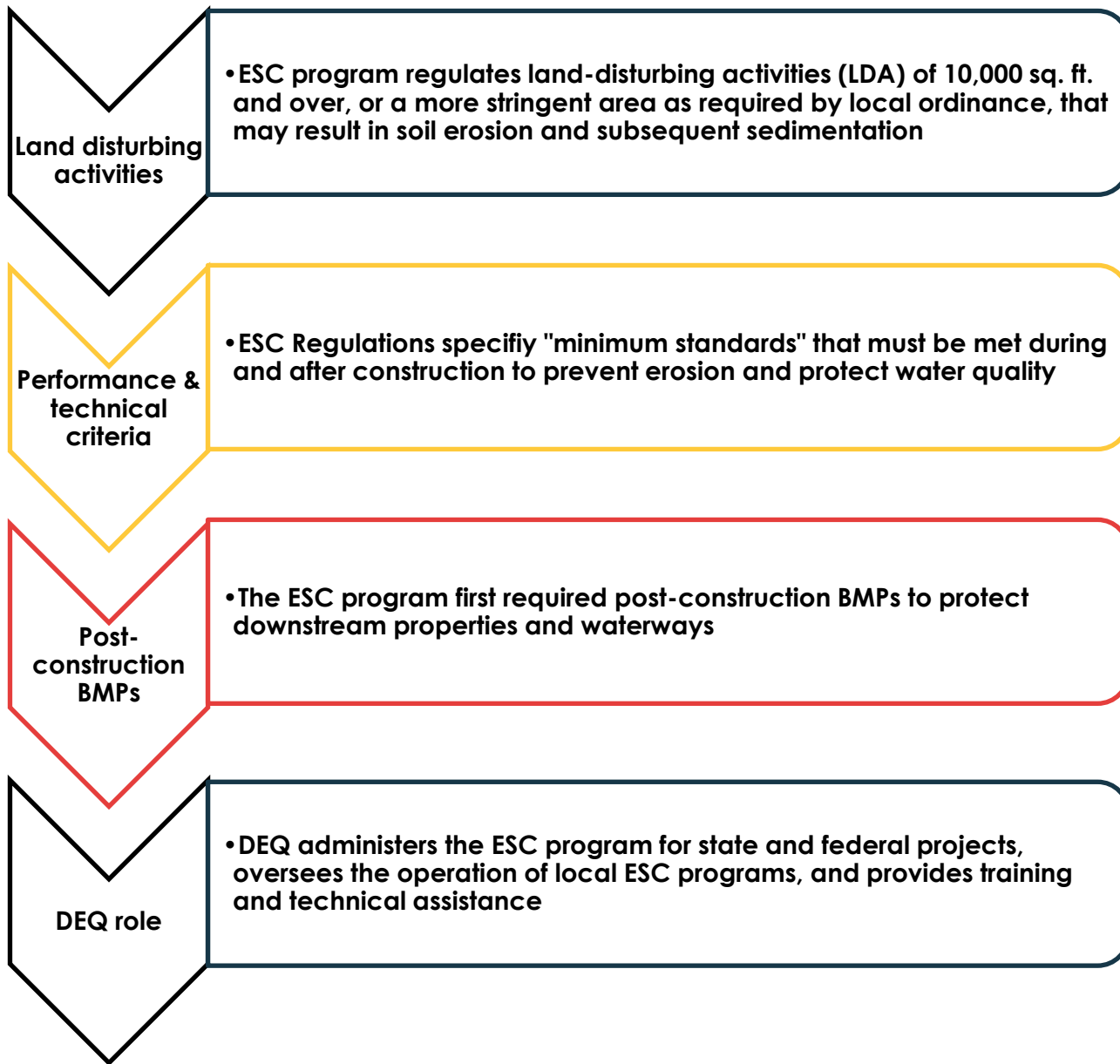
The Clean Water Act (1972)





Virginia Erosion and Sediment Control Law

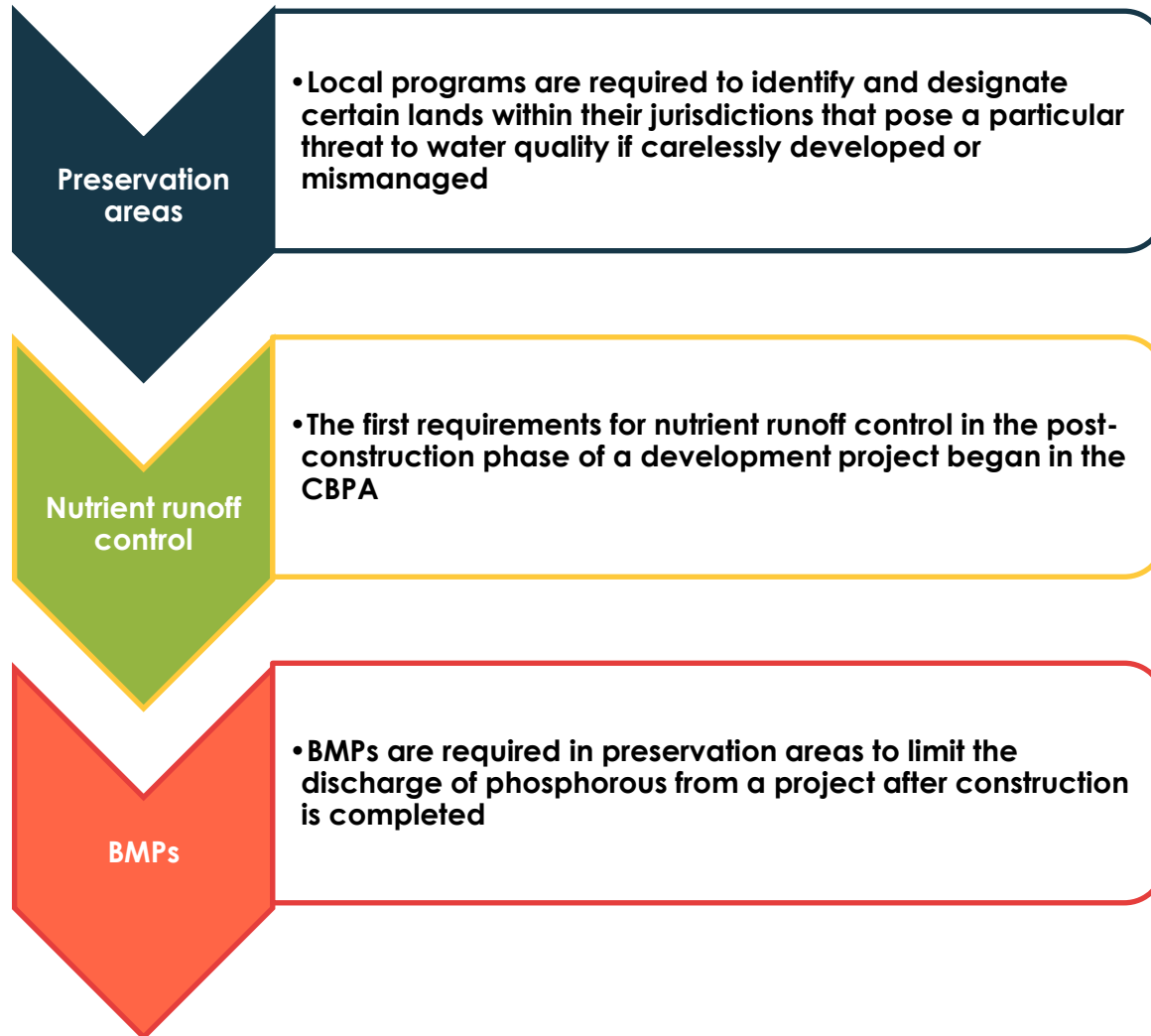
- The Virginia Erosion and Sediment Control (ESC) Law was first passed in 1973
- The original law was passed “to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.”



Chesapeake Bay Preservation Act

- Passed in 1988 with the expressed purpose of protecting “the public interest in the Chesapeake Bay, its tributaries, and other state waters.”
- First law to regulate water quality (nutrients) on different land uses

Chesapeake Bay Preservation Act



Module 3b.

VSMP

Local Program Requirements

- VSMP administered in conjunction with:
 - MS4 program (if applicable)
 - ESC program (if applicable)



Local Program Requirements

- Other requirements of the locality:
 - Consistent with Regulations
 - Compatible with MS4 permit (if applicable)
 - At least as stringent as Construction GP
 - Provide requirements for long-term maintenance of stormwater management facilities

Local Program Requirements

- Locality VSMP authority must adopt an ordinance for the administration and enforcement of the program

Enforcement

- Informal and formal admin procedures
 - Ordinance must include components of:
 - Verbal warnings and inspection reports
 - Notice of corrective action
 - Consent orders including civil charges
 - Notices to comply



Enforcement

- Civil and criminal judicial enforcement
 - Ordinance must include:
 - Enforcement authority
 - Schedule of civil penalties

Max penalty = \$32,500/violation/day

- Criminal, misdemeanor, felony charges, and injunctions are also an option

Enforcement

- Civil penalties may be imposed for:

**No Construction
GP registration**

**No SWPPP,
incomplete
SWPPP, SWPPP
not available**

**No approved
ESC and SWM
plan**

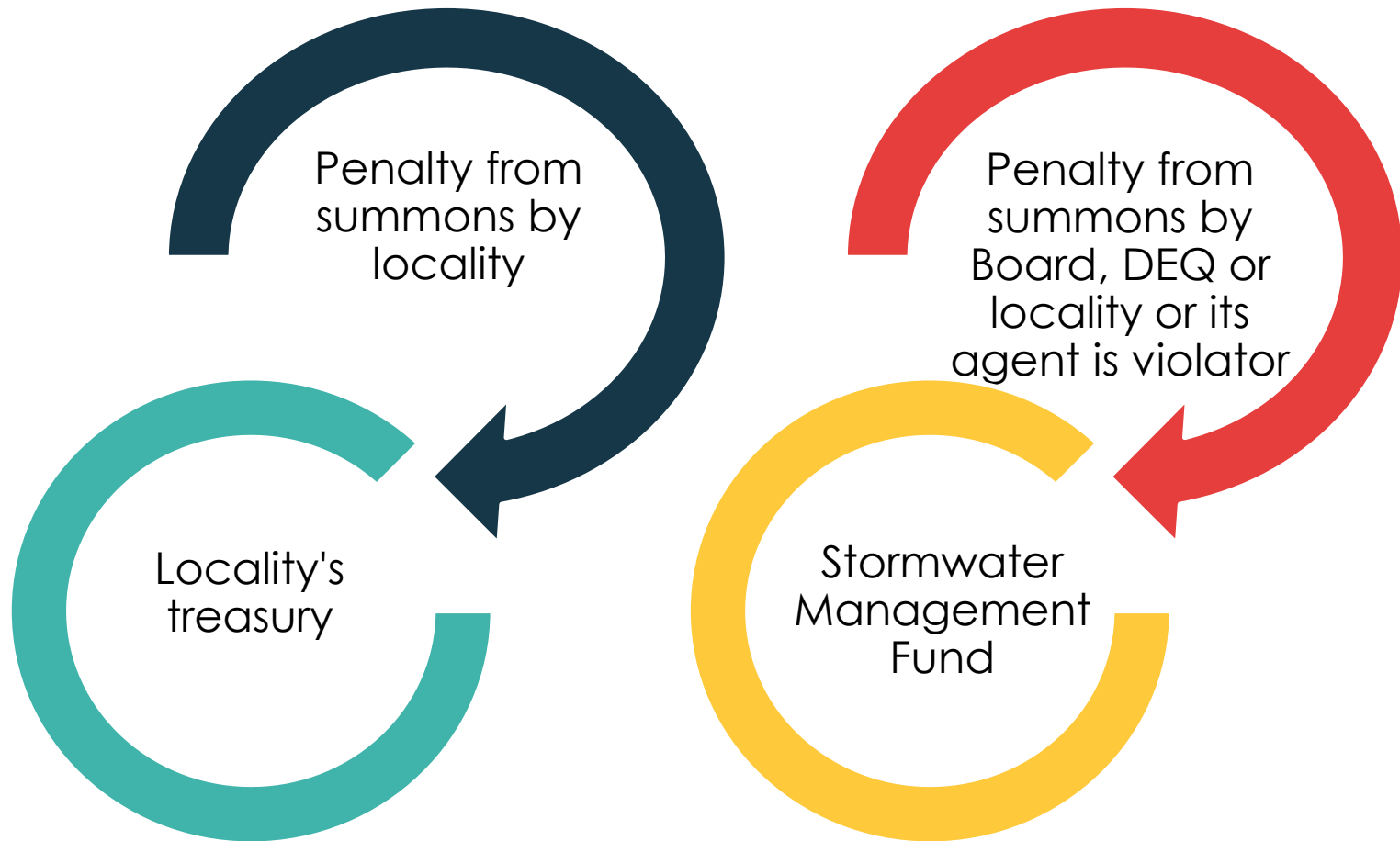
**Failure to install
BMPs or ESCs**

**Operational
deficiencies**

**Failure to
conduct
required
inspections**

**Incomplete,
improper, or
missing
inspections**

Enforcement



Enforcement

- Notice to comply
 - Served upon permittee if locality VSMP authority or DEQ determines failure to comply with permit conditions

Enforcement

- Notice to comply

**Measures
needed to
comply with
permit
conditions**

**Time within
which measures
must be
completed**

Enforcement

- Notice to comply
 - Upon failure to comply within the time specified, the following actions may be taken:



VSMP authority
permit



Construction
GP



Enforcement

- Stop work order
 - Land-disturbing activities must stop until:
 - Violation of the permit has ceased
 - Approved plan and required permits are obtained
 - Specified corrective measures have been completed



Enforcement

- Stop work order
 - Orders must be issued:
 - In accordance with local procedures if issued by locality VSMP authority
 - After hearing if issued by DEQ



Enforcement

- Stop work order
 - Order is effective:
 - Upon mailing with confirmation of delivery
 - Personal delivery



Enforcement

- Emergency order

- Violation:

- Grossly affects, or
 - Presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacts water quality



Enforcement

- Emergency order
 - May be issued:
 - Without advance notice or hearing
 - Requiring the activity to stop immediately
 - Opportunity for a hearing must be provided
 - Affirms, modifies, amends, or cancels the emergency order



Enforcement

- Injunctive relief
 - Board, DEQ, or local VSMP authority may request the court to compel compliance with:
 - Act
 - Rule
 - Regulation
 - Ordinance
 - Approved standard and specification
 - Order
 - Permit condition

Enforcement

- Hearings
 - Permit applicant, permittee, or person subject to the Construction GP requirements that was aggrieved by any action of the VSMP authority taken without a formal hearing, or by inaction of the VSMP authority, has the right to a hearing

Enforcement

Civil action

Violates:
Act
Regulations
Local ordinances
Standards +
specifications

Fails, neglects, or
refuses to comply
with order of :
Locality VSMP
authority
DEQ
Board
Court

Court can assess
penalty up to
\$32,500
per violation per day

Enforcement

Consent order

Violated or failed,
neglected, or refused to
obey: Act, local
ordinance, permit
condition, Regulation,
order

May include civil
charges up to \$32,500
for each violation

Enforcement

- Criminal actions for violators who act:
 - Willfully
 - Negligently
 - Knowingly

Misdemeanor

Behavior	Punishment Individuals	Punishment Non individuals
Willfully or negligently violates: <ul style="list-style-type: none">• VSMA• Regulations• Order• Permit• Ordinance	Jail for up to 12 months and/or fine between \$2,500 and \$32,500	Fine \geq \$10,000

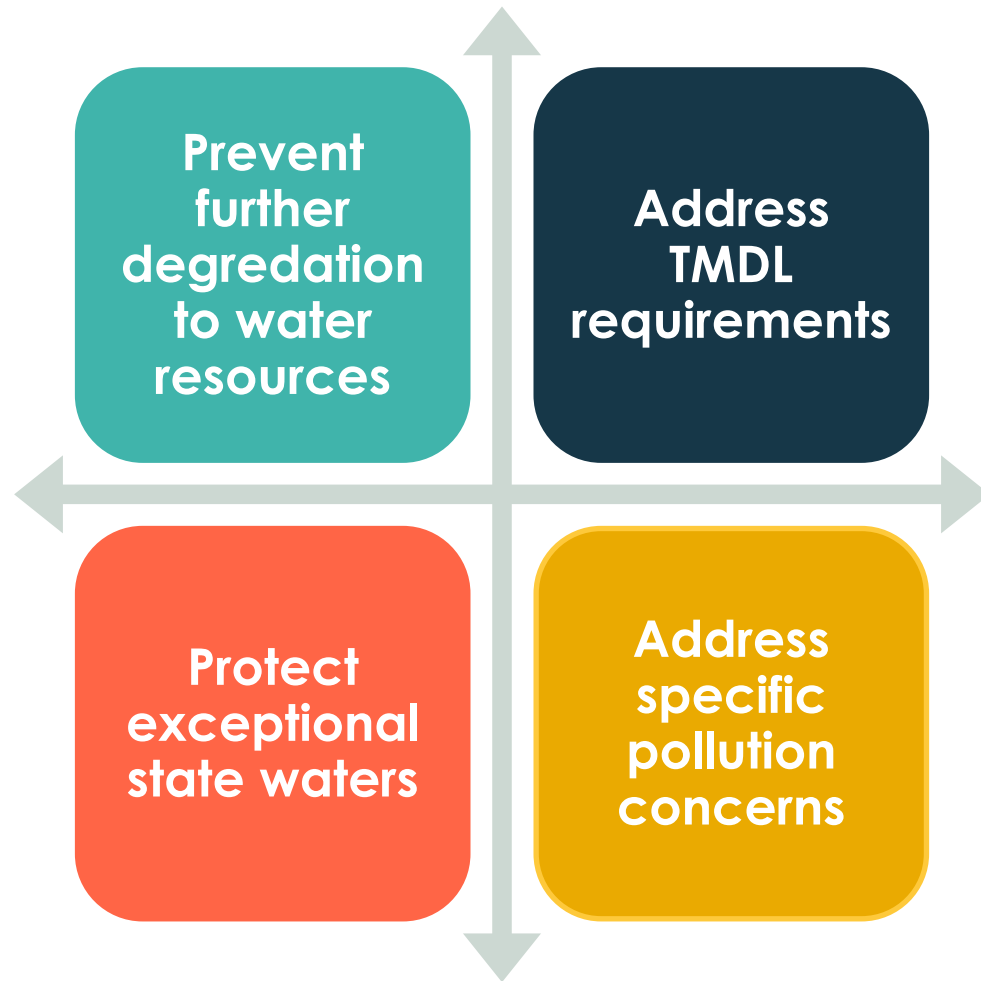
Felony

Behavior	Punishment Individuals	Punishment Non individuals
Knowingly violates: <ul style="list-style-type: none">•VSMA• Regulations• Order• Permit• Ordinance	Imprisonment 1-3 years and \$5,000 - \$50,000 fine	Fine \geq \$10,000
Knowingly makes a false statement in required form		
Knowingly renders inaccurate a monitoring device or method		

Felony

Behavior	Punishment Individuals	Punishment Non individuals
Knowingly violates provision of VSMA <u>and</u> knows at the time they are placing another person in imminent danger or death or serious bodily harm	Imprisonment 2-15 years and/or fine up to \$250,000 Maximum fine and imprisonment doubled for subsequent convictions of same person	Fine up to the greater of \$1 million or 3x economic benefit as a result of the offense Maximum fine and imprisonment doubled for subsequent convictions of same non individual

More Stringent Ordinances



Prohibiting BMPs and More Stringent BMP Requirements

Specific land-disturbing project

- Based on review of SWM plan and project site conditions
- Can be appealed to DEQ

Jurisdiction wide or specific geographical area

- Affected landowner or agent has 90 days from adoption to ask DEAQ to review locality's determination

Module 3c.

Documentation Requirements for Non-Locality VSMP Authorities

Documentation

- Non-locality VSMP authorities must have program documentation that's at least as stringent as the Construction GP



Documentation

- 1 Accept registration statements and conduct plan review, plan approval, inspections and enforcement
- 2 ESC and SWM plan submission and approval
- 3 SWPPP compliance
- 4 Inspections and monitoring of construction site by operator
- 5 Long-term inspection and maintenance
- 6 Follow reporting and recordkeeping requirements

Module 3d.

Annual Standards and Specifications

Standards and specifications

What	Who Must	Who May	Permit
Set of standards & specifications approved by DEQ describing how LDA must be conducted	<ul style="list-style-type: none">• State entities• Linear projects:<ul style="list-style-type: none">• Electric• Natural gas• Telephone• Railroad	Federal entities	Obtained before the start of LDA

Module 3e.

The VSMP Process

Step 1: Plan preparation

- Erosion and sediment control plan
- Stormwater management plan

Step 1: Plan preparation

SWM plan

Discharge
information

Contact
information

Narrative

General
description of
SWM facility
O&M

SWM facility
information

Hydrologic and
hydraulic
computations

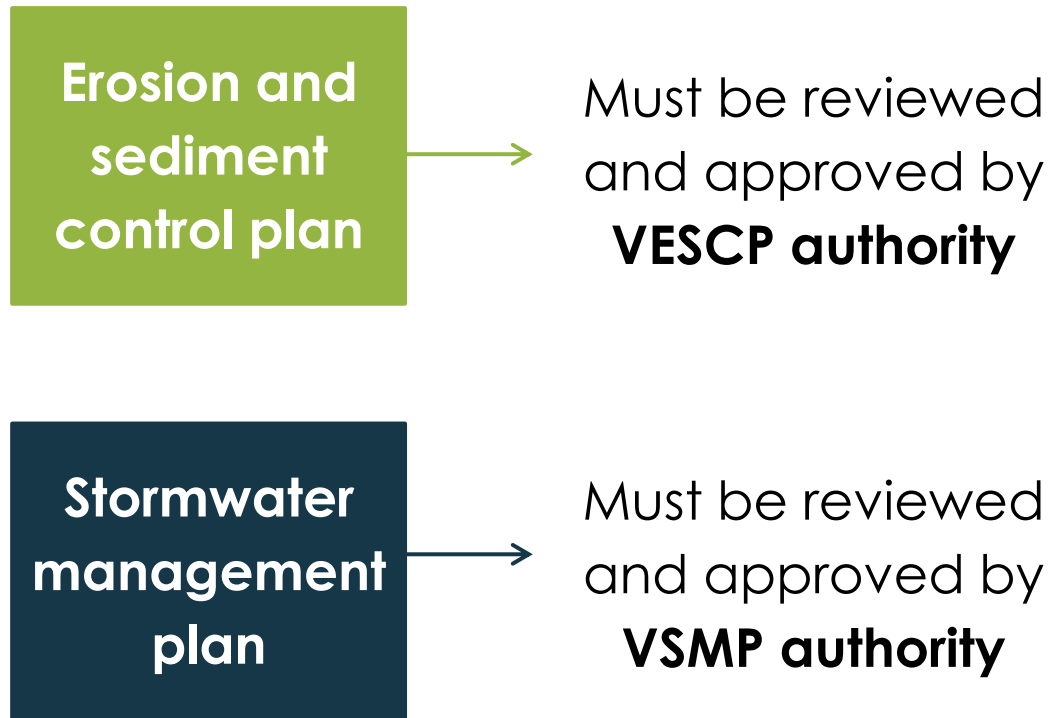
Documentation
for water quality
& quantity
compliance

Maps

Offsite options
(if used)

Fee and form
(if required)

Step 2: ESC and SWM Plan Submittal



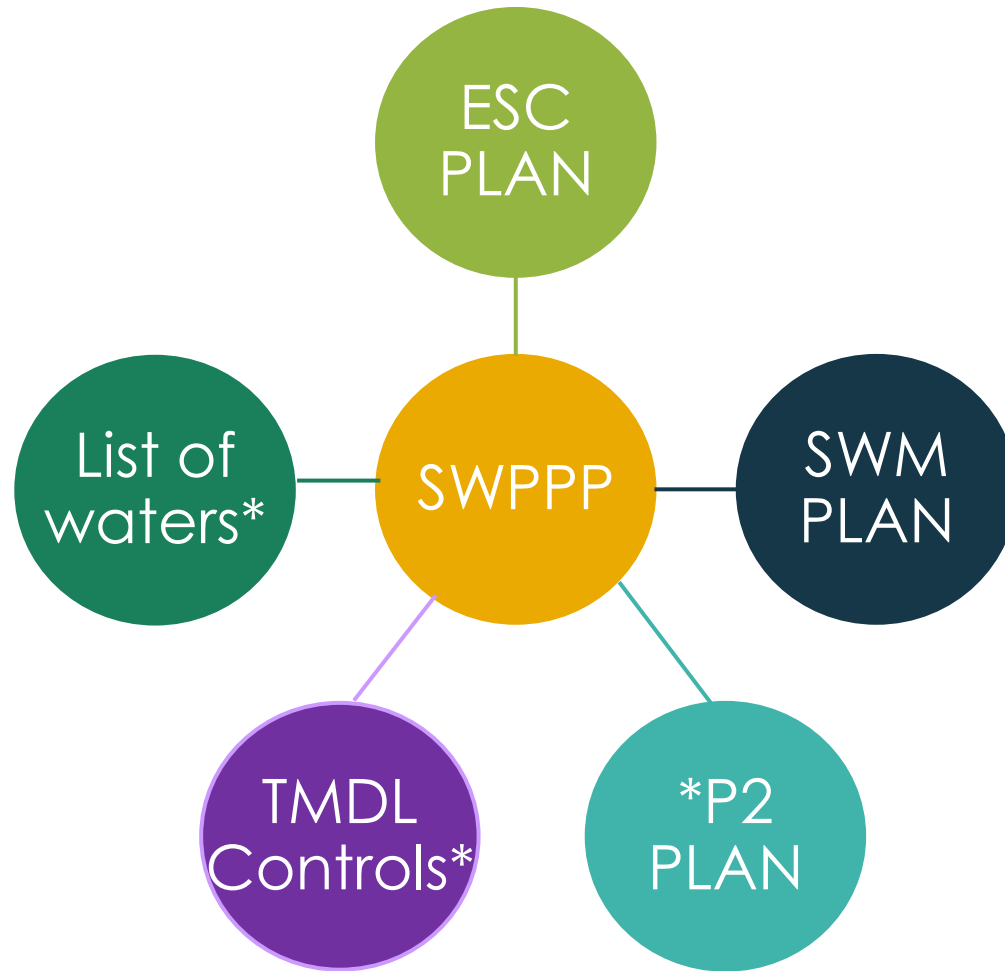
Step 3: Determination of Completeness

- **15 days** to determine completeness of SWM plan

Step 4 & 5: Plan Review and Approval

- If a plan is complete and the applicant has been notified within **15 days** of submission, the VSMP authority (plan reviewer) has **60 days** from the time of notification to review the plan.

Step 6: SWPPP Completion



Pollution Prevention (P2) Plan

- Addresses potential pollutant generating activities that may reasonably be expected to affect the quality of stormwater discharge from a construction activity and support activity

Step 7: Construction GP Registration Statement Submittal

- For projects greater than or equal to one acre, the operator must submit a complete and accurate registration statement and pay any required permit fees. By signing the registration statement, the operator is certifying they have prepared a SWPPP with the required plan approvals.

Step 8: Construction GP Issued by DEQ

- Once the VSMP authority determines an operator is ready for permit coverage, the registration statement information is entered into the Construction GP System and then DEQ issues coverage under the Construction GP by sending a Notice of Coverage Letter and copy of the Construction GP to the operator

Step 9: VSMP authority approval to start construction

- A locality VSMP authority may only approve the start of land-disturbance **after** DEQ has issued the Construction GP

Step 10: Inspections

- VSMP authority inspections
 - Periodically inspect for:
 - ☑ Compliance with ESC plan
 - ☑ Compliance with SWM plan
 - ☑ Development, updating, implementation of P2 plan
 - ☑ Development and implementation of additional control measures to address a TMDL (when required)

Step 11: Construction ends

- Before the operator can submit a notice of termination to the VSMP authority, the Construction GP requires them to meet certain permit termination requirements, which are discussed more in Module 5

Step 12: Notice of Termination

- Notice of termination should be submitted no later than 30 days after meeting the permit termination conditions

Step 13: Final inspections and maintenance agreements

- The VSMP authority may inspect a site to determine whether the operator has met the proper permit termination requirements

Step 14: Construction GP
terminated by DEQ

Step 15: VSMP authority
assembles and maintains
records and documentation

Step 16: VSMP administrator returns bonds or securities

- Within 60 days of completing the requirements of the Construction GP, the VSMP authority returns or terminates any bonds or securities provided by the operator at the onset of the project.

Step 17: Inspections after construction

- The VSMP authority (inspector) must inspect stormwater management facilities at least once every **five years** to ensure they are being adequately maintained as designed

Module 3f.

Single-Family Detached Residential Structures

Single-Family

- Single-family detached residential structures disturbing ≥ 1 acre
 - Need coverage under the Construction GP
 - Do not complete registration statement
 - Download coverage letter from DEQ

Single-Family

- Agreement in lieu of a SWM plan
 - May be executed between VSMP authority and permittee of single family residence
 - Specifies how to comply with VSMP requirements

Single-Family

- Locality VSMP does not have to require long-term maintenance agreement for stormwater management facilities
- No maintenance agreement = no requirement for locality VSMP inspections
- Locality VSMP does not have to require construction record drawings

Module 3g.

Reports and Record Keeping

Reports and Record Keeping

- Fiscal year reporting to DEQ

**# of permanent stormwater
management facilities
completed**

of enforcement actions

of exceptions granted



Reports and Record Keeping

- Record keeping

3 yrs.

- Project records
- Registration statements

5 yrs.

- Post-construction inspection reports

Until
removed

- Construction record drawings



Module 3h.

Program Reviews

Program Reviews



Questions?